

William Rider, Esq; Appellant.

Pricilla Baylie, Widow, Respondent.

The Appellant's C A S E.

THAT the Appellant and Respondent are Brother and Sister, and for many Years lived together in great Friendship and Amity, inasmuch that the Respondent had the Liberty and Command of the Appellant's Houses, Coach, Horses, and Servants, at the *Mews* here in Town, at *Bartonflacy* in *Hampshire*, *Warely-Common* in *Essex*, and *Wakefield-Lodge* in *Northamptonshire*, and for many Years a great part of the Appellants time was spent in retrieving the Respondent and her Estate from the many Debts, and Incumbrances thereupon, during which time, frequent Occasions happened for the advancing, lending, and paying several Sums of Money for, and upon the Account of each other:

Michaelmas-Term, 1706. the Respondent brought her Bill in Chancery.

That notwithstanding the Appellants Endeavours and Offers to prevent and Accommodate all differances between them in a friendly manner, by a Reference to the Respondents own Son, or any other Person, which is acknowledged in his disposition in *Michaelmas-Term*, 1706. a Bill was exhibited in the Chancery against the Appellant for an Account of the said several Matters and Transactions ever since 1672: But more particularly as to a Sum of 503 l. 16 s. pretended to be lent to the Appellant by one Mr. Samuel Heron (who was Agent both to the Appellant and Respondent) out of the Respondent's Money in September, 1683. And also for an Account of the Rents and Profits of an Estate at *Hunningham*, in the County of *Norfolk*, which Account had been before settled by the Respondent's own Son, Mr. William Baylie.

To which Bill the Appellant Answered, and the Cause came on to be heard before the Right Honourable the Lord High-Chancellor of Great-Britain.

19. Nov. 1707. The Cause heard, and an Account decreed.

That his Lordship was pleased to order that the Appellant and Respondent should proceed to an Account, and that the Master should certify what was due from one Party to the other; and if in taking the said Account, the said Master should find any Sums of Money due from either of the Parties to the other, upon any Loans, or Securities that ought to carry Interest, then the Master was to allow Interest for the same.

26 Feb. 1707. Report ex parte.

That the Respondent brought in her Charge, and the Master made a Report *ex parte*, whereby he certified due from the Appellant 3553 l. 16 s. and 3d. three farthings, although the Respondent had not so much as proved one Article of her said Charge.

That the Appellant on paying of Costs, obtain'd an Order to go back to the Master on the said Account for a further time, and that time was also enlarged, but the Appellant being deprived of his Books and Papers, which were sent by the Respondent in the Year 1690. to her Son's Chamber at *Oxford*, and from thence to the Appellant's Brothers House in *Westminster*, many of them were lost and imbezeld, and several Entries with Black-Lead, and silver Pens were by length of time become unintelligible, or wore out, and the Accounts in question consisting of numerous Particulars of a long Date, the Appellant was a Loofer in many Items of the said Account.

26 July, 1708. The Master's further Report.

That the Respondent's Cash-Book for that Year where the 503 l. 16 s. was pretended to be paid, being torn out, the Appellant was thereby deprived of all the Benefit he propos'd to himself from such Discovery as might have been had from the said Cash-Book.

13 Dec. 1708. Order on arguing Exceptions.

That by the Master's further Report and Account thereunto annexed, the Sum of 3553 l. 16 s. 3d. three farthings was reduced to 808 l. 11 s. 6d. due from the Appellant to the Respondent upon the Balance of the said Account.

That both Parties excepted to the said Report, and the Exceptions with the special matter of the Report as to Interest, coming to be heard, the Lord-Chancellor varied the Master's Report, particularly as to 100 l. for his Trouble and Expences about the Purchase of Mr. Griffith's Mortgage on the Estate at *Hunningham*, instead of the Sum of 50 l. allowed by the Master, tho' in Fact the Appellant did really expend therein above 500 l.

And it was further ordered, that the Respondent's third Exception should be allowed, whereby the Appellant is cut off 40 l. for living at his House at the *Mews*, tho' the Appellant has sufficient Proof of the time and Value thereof.

16 June 1709. The Master's further Report.

And as to Interest, his Lordship was pleas'd to declare, that several great Sums of Money appear'd to have been paid by both Parties to each other upon an open Account, and that none of those Sums so paid upon an open Account, nor any other Sums, unless Lent or Borrowed, ought to carry Interest, and that the first Sum which carried Interest, appeared to be a gross Sum of 500 l. lent by the Respondent to the Appellant in September 1683. And his Lordship was pleas'd further to declare, that from that time (as the Balance was on the Respondent's part after all mutual Accounts satisfied) Interest ought to be computed for so much of the said 500 l. as should on the Account then Ballanced appear to have been due to the Respondent; and in case it should happen that above 500 l. should be then due to her, yet Interest ought not to be computed for any greater Sum than the said 500 l. until such Sum or Balance due unto her should become greater, by reason of any more borrowed by the Appellant of her by Note, Letter, or other Writing.

The Master made his further Report, and thereby reduced the 808 l. 11 s. 6d. before certified to be due from the Appellant, to 620 l. 13 s. 11 d. and the Master, after an Allowance of Interest for such Sums of Money as he conceived were directed by the said Order to carry Interest, added the same to the said Principal Sum of 620 l. 13 s. 11 d. and so Reported due from the Appellant 1201 l. 0 s. and Ninepence halfpenny, which makes the Interest (which was thought so inconsiderable before) now almost equal to the Principal, and his Lordship was pleas'd (upon Exceptions taken) to confirm the Report, with some small Variations.

1st. As to the 503 l. 16 s.

That the Appellant apprehending himself to be aggrieved by the said several Decrees, Orders, Reports, and subsequent Proceedings thereupon had, hath appealed therefore to your Lordships for Redress therein, as to the several Points herein after mentioned.

And first, as to the said 503 l. 16 s. transferred from the Respondents Cash to the Appellants in Sir Charles Duncomb's Books; It was done by Heron who had made use of above 2000 l. of the Appellant's Money at that time which lay at Sir Charles Duncomb's also, and therefore ought to be made good to the Respondent by the said Heron who made that transfer without the Knowledge of the Appellant until afterwards, and tho' the Appellant hath by way of *Memorandum* taken Notice of it in his *Almanack* for that Year, the Sum is not brought into the Account of Cash by which 'tis Evident the Appellant thought it satisfied, or did not look on himself as liable to make good the same.

And had not the Respondent's own Cash Book for the said Year 1683. when such transferr was made been quite torn out and destroyed, and the said Mr. Heron's Journal-Book for the same Year (which is only missing out of all his Books) it would in that Book have appeared (as by the Affidavit and Deposition of one Mr. Edward Morgan taken in the said Cause) that the said 503 l. 16 s. is accounted for, and presumed to be repaid and satisfied as would plainly appear was the same produced in a much larger Account of Receipts and Payments there standing in ballance, and it is a strong Presumption the said 503 l. 16 s. was repaid and satisfied as aforesaid, when no manner of Note or Security was ever desired by the Respondent, or given by the Appellant altho' the Respondent had been so careful to take a Note and Security for 150 l. only. But suppose it was not repaid by the following Payments, it can have no pretence to carry Interest, since it was paid on an open Account without either Note, Letter, or other Writing, when the Appellant was daily disbursing Money on the Respondent's Account.

And yet Interest is afterwards charged and carried on for the said 500 l. in the Respondent's favour, as well as for 100 l. from the 9th day of July, 1689. to the End of the Account, tho' repaid the 28th of August following, as also for the said 150 l. from the 10th of February, 1692. and for another 150 l. from the 10th of June 1692. and 85 l. more from the 19th of December following, and 100 l. more (Received of Mr. Charles Ballet on the Respondent's Note from the 6th of February, 1694. which several Sums were had of the Respondent by the Appellant to Answer her Occasions, as well as his own, by Letter only, and since no Interest was then desired, insisted on, or provided for, (the 150 l. the 10th of February, 1692. only excepted) it seems to be a plain demonstration that no other Sum was ever intended to carry Interest.

2d. As to the Norfolk Estate.

For that the Appellant hath an Allowance of no more than 100 l. for his Five Years Expence and Trouble about the *Norfolk* Estate, when he hath proved above 200 l. spent upon that Account.

3d. As to the Mews House.

For that the Appellant hath no Allowance made him upon Account of the Respondent's dwelling at, and making use of the Appellant's said House at the *Mews*, to the amount of 40 l. although there is sufficient Proof thereof.

4th. As to Interest.

For that the Appellant is charged with Interest (the whole Account from the beginning to the ending thereof being entirely open) neither the said 503 l. 16 s. nor any other Sum, ought to carry Interest, for which there was no Security given, or any time required, (the Balance in 88. being in the Appellant's Favour) and the Appellant is every six Months charged with Interest, and that Interest from time to time carried to the Capital throughout the Account, which in fact amounts to more than Interest upon Interest; and by that way of Computation, the Interest on those Sums directed to carry Interest, exceeds the principal Sum of 620 l. 13 s. 11 d. when the Errors (or the 50 l.) allowed in lieu thereof is deducted, which surely was never intended, since it could not have exceeded the Penalty, had all the Money been lent or borrowed on Bond or Specialty.

5th. As to a Recharge on the Appellant, to the amount of 15 l.

For that the Master hath in his said Report, made an Allowance (*inter alia*) to the Respondent of the Sum of 40 l. and to the Appellant of a Sum of 25 l. whereby the Balance of his first Report is reduced from 808 l. 11 s. 6d. to 620 l. 13 s. 11 d. In which said Sum, the said two Sums of 40 l. and 25 l. are included, notwithstanding which, the said Master hath afterwards added the same Sums at the Foot of his said Report, by way of Charge and Discharge, altho' they were Errors in the former Account not to be included in this Account, which is a plain Recharge to the Amount of 15 l. to the Prejudice of the Appellant.

And therefore the Appellant most humbly hopes that the said several Decrees, Orders, and Reports, or at least such Parts, and so much of them as are herein before complained of, may be Reversed, and set aside. And that such proper Directions shall be given by your Lordships in the Premises aforesaid, as to your Lordships shall seem most just.

John Pratt.
Sam. Dodd.